

Defending Older Adults from Equity Theft, “We Buy Ugly Houses” Scams, and Foreclosure Rescue Scams

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Housekeeping

- All on mute. Use Questions function for substantive questions and for technical concerns.
- Problems getting on the webinar? Send an e-mail to NCLER@acl.hhs.gov.
- Written materials and a recording will be available at NCLER.acl.gov. See also the chat box for this web address.

About NCLER

The National Center on Law and Elder Rights (NCLER) provides the legal services and aging and disability communities with the tools and resources they need to serve older adults with the greatest economic and social needs. A centralized, one-stop shop for legal assistance, NCLER provides Legal Training, Case Consultations, and Technical Assistance on Legal Systems Development. Justice in Aging administers the NCLER through a contract with the Administration for Community Living's Administration on Aging.

About NCLC

Since 1969, the nonprofit National Consumer Law Center® (NCLC®) has used its expertise in consumer law and energy policy to work for consumer justice and economic security for low-income and other disadvantaged people, including older adults, in the U.S.

NCLC's expertise includes policy analysis and advocacy; consumer law and energy publications; litigation; expert witness services; and training and advice for advocates. NCLC works with nonprofit and legal services organizations, private attorneys, policymakers, and federal and state government and courts across the nation to stop exploitative practices, help financially stressed families build and retain wealth, and advance economic fairness.

Agenda



Historical context



High pressure sales for less than fair market value



Classic foreclosure rescue: “sale” with an option to repurchase



Questions?

Historical Context

- Many homeowners now have significant equity in their homes due to soaring home prices.



Reasons for Concern in the COVID-19 Era

- Scammers are eyeing homes that now have more—often significantly more—equity.
- In some new gentrifying neighborhoods, property taxes are rising faster than incomes.
- Many homeowners are facing increased financial hardships due to unemployment or other COVID-related issues.
- Equity thieves are employing more sophisticated, well-developed business models.

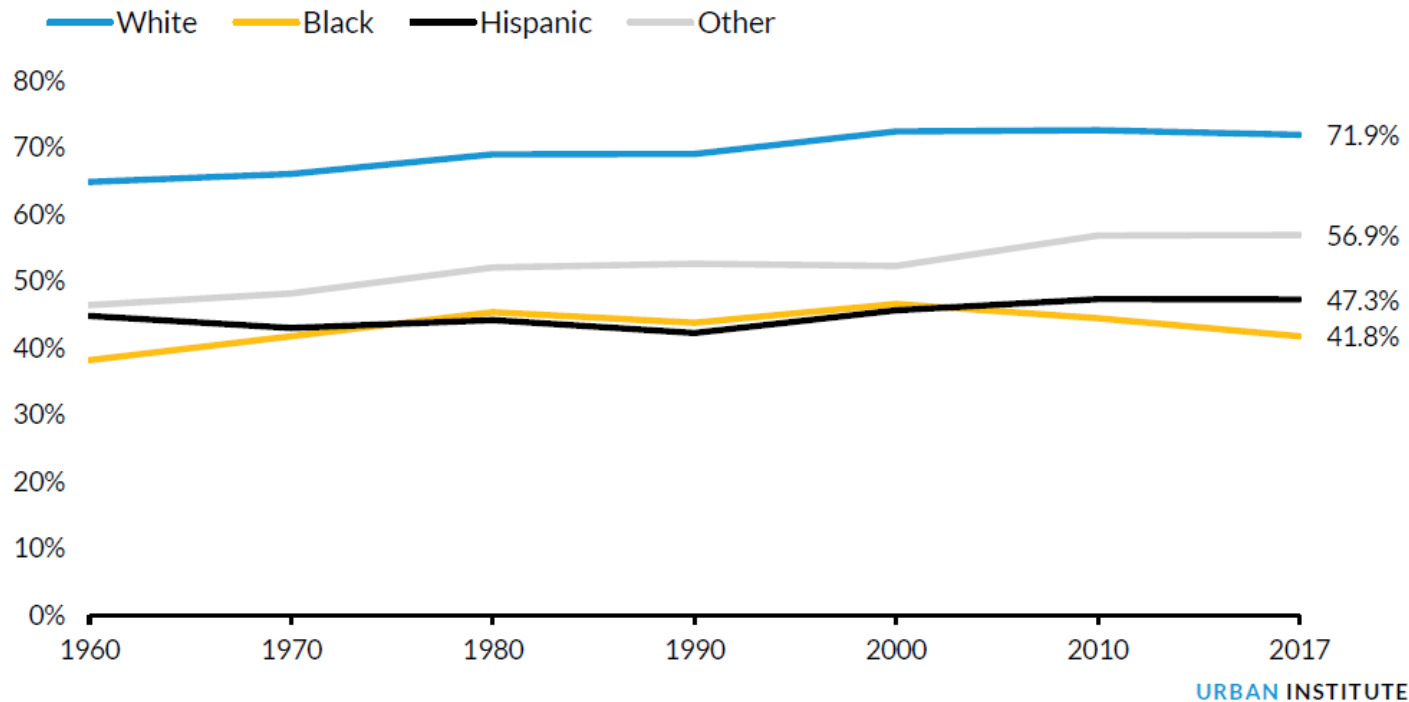
Older Adults Are Targeted

- Very likely to own a home
- Long-time homeowners, so they have usually accumulated more equity
- Now living on retirement/fixed income
- Cognitive impairment or other disabilities more common
- Social isolation, increased anxiety due to the pandemic

The Racial Homeownership Gap

FIGURE 1

Homeownership by Race or Ethnicity



Sources: Decennial Census and the American Community Survey.

We Buy Houses:

How residential property wholesalers use high pressure & deceptive sales tactics to steal homeowners' equity

What is the Issue?

- Homeowners in distress
 - Rising property taxes
 - Repairs needed
 - Unaffordable mortgage
 - Loss of income
- Homeowners want to save their home, but feeling pressure to sell...and sell fast
- Homeowners may not know what their home is worth

Many Homeowners Receive Unwelcome Solicitations to Buy Their Homes

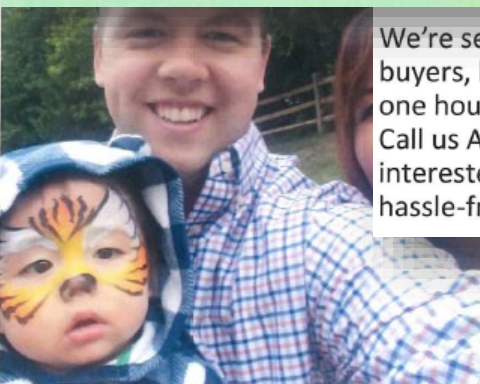
ATTENTION: [REDACTED] I'll pay cash for [REDACTED] and close fast! Call me at 267-272-0752 today.

At EZ Homes, we make selling houses just like yours fast, easy, and painless.

You don't have to worry about if or when your house will sell. You pick your closing date, and we pay you cash. **All you have to do is pick up the phone and call 267-272-0752.**

Is your home a fixer-upper? We'll buy it just as it is. You don't have to fix anything.

Our accurate cash offer comes with no additional expenses. There are no fees or commissions, no hidden closing costs, and no repairs.



We're serious "cash" buyers, but can only afford one house right now. Call us ASAP if you are interested in us making a hassle-free offer today!

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...the agent commissions, repairs, closing costs, and property upkeep while you're waiting to find a buyer.

We're confident that we can offer you more than any other buyer today because of our unique strategy.

Please call us at 215-608-1519 or visit our website at

"We take pride in making sure that every real estate deal we do BENEFITS the seller!"

and I am interested in purchasing [REDACTED].

...the buyer and real estate agent
...ase more property in your

Don't Want? ...opportunity to
...terested in listing

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to speak with you about your property at:

fer that is waiting for your response. If we don't
n, your cash offer will be terminated for good.

Advertising in Neighborhoods

- Many neighborhoods are plastered with bandit signs seeking to purchase homes



Common Abusive Practices

- Aggressive solicitation
 - e.g., phone, mail, text, door hangers, post-it notes on door
- Building fake rapport
- Down-playing the value of the home
- Overstating the downsides of working with a realtor
 - “You would need to spend \$40K on repairs before a realtor would list this house...”
 - “That 6% commission is a lot of money...”
- Pressure to sign a contract **today**
- If homeowner changes their mind, they may face lawsuit to enforce the agreement

Agreement of Sale

- The goal of Residential Property Wholesaler is for a homeowner to sign an Agreement of Sale

Standard Agreement to Sell Real Estate

PARTIES: _____ as Seller, and _____ and/or assigns, as Buyer, hereby agrees that the Sellers shall sell and Buyer shall buy the following legally described property.

I. DESCRIPTION:

- Legal description of real estate: _____
- Folio Number: _____
- Personal property including all buildings and improvements on the property and all right, title and interest of Seller in and to adjacent streets, roads, alleys and rights-of-way.

II. PURCHASE PRICE: \$ 5,000

PAYMENT:

- Cash Deposit to be held in escrow by buyer elected title company, in the amount of \$ 1.00 (see Page 6 for title company names, addresses, and contact)
- Title company to be: _____
- Cash, certified or local cashier's check on closing and delivery of deed, subject to adjustments and proration: \$ 4,999

III. TIME FOR ACCEPTANCE AND EFFECTIVE DATE: If this offer is not executed by both of the parties hereto on or before _____ this offer shall thereafter be null and void. The date of Contract shall be the date when the last one of the Seller and Buyer has signed this offer.

IV. CLOSING DATE: This transaction shall be closed and the deed and other closing papers delivered on _____ unless extended by other provisions of Contract, or by written agreement of the Parties.

V. RESTRICTIONS, EASEMENTS, and LIMITATIONS: The Buyer shall take title subject only to: Zoning, restrictions, prohibitions and other requirements imposed by governmental authority; Restrictions and matters appearing on the plat or otherwise

Educating Homeowners

- Educating homeowners about their options to sell their homes for a fair price is important

PREDATORY HOME-BUYING

Hi!
I'm a local organizer here to talk with you about predatory home-buying!

Who are predatory buyers?
They are **real estate investors** who go to neighborhoods where home values are **going up**, buy houses for **way less** than they're worth, and then **sell them later** for their real value or more.

Chances are you've already been reached out to in the form of a **call, text, mailing, or a WE BUY HOUSES ad.**

WE BUY HOUSES
XXX-XXX-XXXX

Isn't that just house flipping?
It's more about the **tactics and targets** of these investors. They target people who are going through financial hardship and **pressure them into selling**. These aren't empty properties, these are families being harassed to sell their home for a price that **won't buy them another house nearby.**

That sounds really bad...
Right? Some will **pressure people to sign unclear papers**, papers not in the homeowner's **native language**, or not let them **read the papers** that end up being agreements to sell before they sign.

What if I don't want to sell my house but I don't feel like I have a choice?
You're not alone! Many people sell their home because of **debt: liens, taxes, tangled titles, or expensive home repairs.** Community Legal Services can help find options to make it possible for you to stay in your home. You can talk to someone for free by calling the **SAVE YOUR HOME PHILLY HOTLINE at 215-334-4663!** Even if you signed an agreement, there might be a chance to get your home back!

What if I DO want to sell my home?
You absolutely should sell if that is what you want BUT we want to make sure you get a fair price! You stayed in your community and **contributed to it in a time when no one was developing here**, we encourage you to find the best price for your home! Make sure you talk with a licensed real estate agent before you sell. They'll make sure that you get the **MOST** money for your house. For a general price range, **check out atlas.phila.gov, Zillow.com, or Eppraisal.com** or text your property address (e.g., "1234 Market Street") to get more information about your home's value: 267-214-0104.

Is there any way to fight back?
YES! Working together, we can put these predatory home buyers on notice that our neighborhood is not for sale! And if they keep bothering us, we're going to fight back. We might even be able to sue them and make them pay up to \$2,000 every time they harass us. If we work together, we can put a big dent in their cash flow and stop them!

For more information, please visit: clsphila.org/home-scams

Fighting for Homeowner Rights (1 of 2)

- Educating homeowners about their rights to sell their homes is not new.
- In the 1950s and 1960s, communities fought back against blockbusting.

**NEIGHBOR,
WHERE ARE YOU RUNNING TO?**

Why not wait until you meet your neighbor before you judge him? . . . are you being panicked by some unscrupulous real estate dealers into leaving a good home neighborhood near the downtown area for another of very doubtful value and probably overpriced?

Are you going to sacrifice your life savings because of a lot of unfounded rumors by men who will profit by it?

Think Hard First! Then, if you must, sell, remember: nobody wants to be forced into a ghetto. The street you might be moving to will also eventually be for all Americans, of all nationalities and colors.

If your heart won't admit that all men are entitled to decent homes, then remember:

1. The United States Supreme Court has ruled that there is only one class of citizens.
2. The United States Supreme Court has ruled that there are no exempt and excluded neighborhoods.

So, don't do anything foolish!

THE OLD NEIGHBORHOOD WHERE YOU RAISED YOUR CHILDREN AND MADE YOUR FRIENDS IS STILL THE BEST LOCATED IN OUR CITY.

So why run, neighbor?

JEWISH COMMUNITY COUNCIL OF DETROIT
803 Washington Blvd. Bldg.
Detroit 26, Michigan, Woodward 3-1657

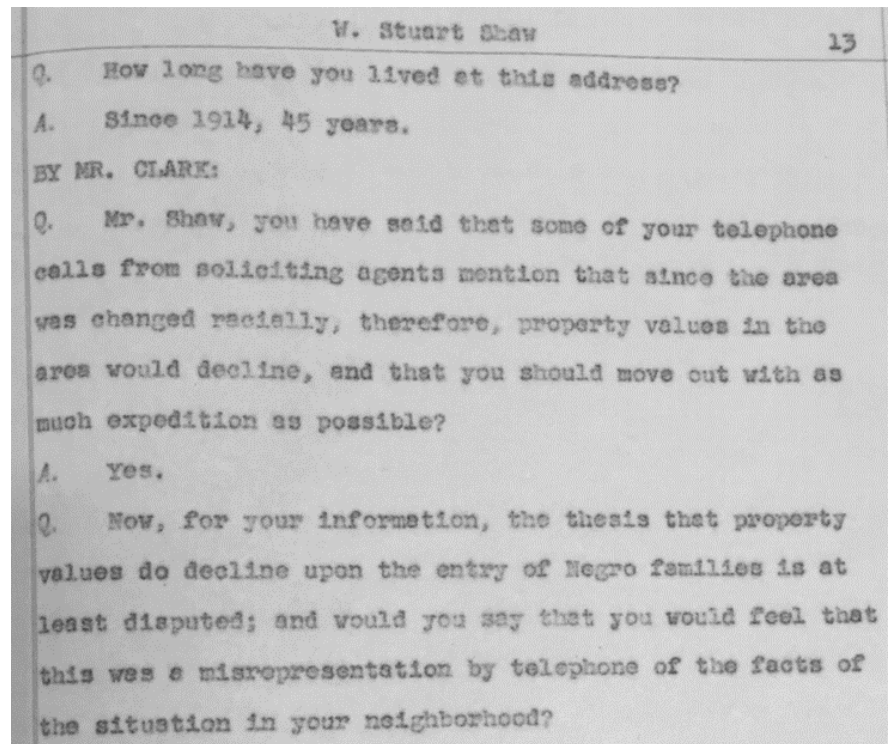
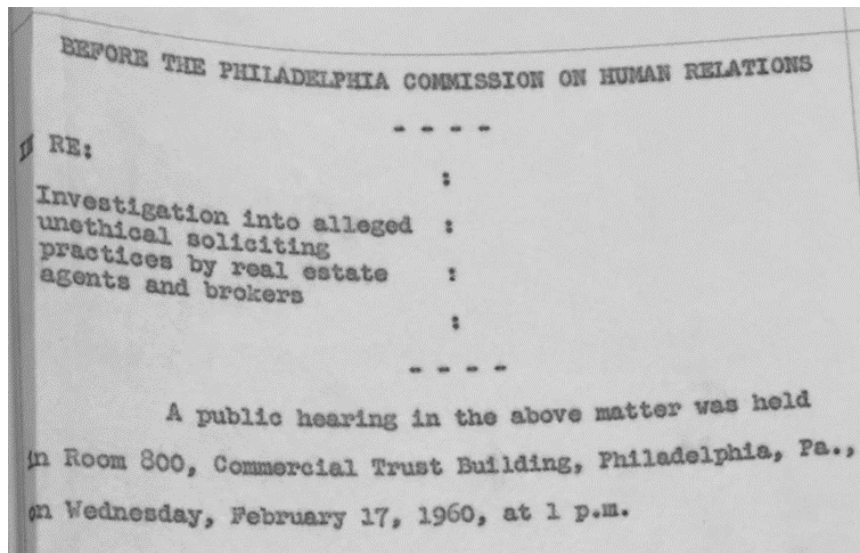
Dr. Shmarya Kleinman, President
Jewish Community Council

Louis Rosenzweig, Chairman
Internal Relations Committee

Sub-Committee: Robert Nathans, Irving Schlusel, and Mrs. Oscar Schwartz

Fighting for Homeowner Rights (2 of 2)

- In 1960, for example, Philadelphia investigated “unethical soliciting practices by real estate agents”



Public Hearing

- Philadelphia held a public hearing, inviting members of the public to testify about their experiences



Legislative Solutions

- Philadelphia enacted legislation to regulate Residential Property Wholesalers in response to community opposition

It is Time to Curb Abuse in the Predatory “We Buy Houses” Industry.

Many homeowners in Philadelphia receive repeated calls, letters, and visits from “We Buy Houses” residential property wholesalers offering cash to buy their homes or other property. Often, these wholesalers target people who are going through financial hardship and use high-pressure tactics to convince homeowners to sign agreements to sell. They target homeowners in neighborhoods with rising home values, especially in Black and Latinx communities. These wholesalers often offer far less than the actual value of their property. As a result, long-time homeowners lose valuable wealth and family homes are lost.

Legislation in City Council (Bill 200544) would curb the worst abuses in this industry.

The legislation would:

- Require residential property wholesalers to provide homeowners with a Bill of Rights at least three days before a sale.
- Require residential property wholesalers to be licensed with the City and follow a code of ethics.
- Give homeowners important new rights when residential property wholesalers do not follow the law.
- Create a Do Not Solicit list that homeowners can join if they do not want to receive solicitations to sell their house.
- Assesses a fine of up to \$2,000 if a wholesaler tries to get homeowners on the Do Not Solicit list to sell their home.



Local Ordinances

- Local ordinances are only one part of efforts to help homeowners in rapidly gentrifying communities

OPINION

Philly's new homeowner protection law is a useful tool for neighborhoods facing gentrification | Editorial

Posted: December 2, 2020 - 6:00 AM



The Inquirer Editorial Board | opinion@inquirer.com



TIM TAI / STAFF PHOTOGRAPHER

Philadelphia City Council's **unanimous Nov. 19 vote** to protect homeowners from unlicensed real estate wholesalers — known for those “**we buy houses for cash**” posters on utility poles — could help empower residents in neighborhoods on gentrification's next frontier. Sponsored by Councilmember Allan Domb, himself a Realtor, the **new law** will establish licensing and regulatory requirements for wholesalers, who rather than buy properties outright, make

Defenses and Counterclaims: Pre-Sale

- Fraud
- Defenses to specific performance
 - Grossly inadequate/unjust sale price
- Bankruptcy: Reject the executory contract
 - Debtor in Chapter 13 may reject executory contract
 - Purchaser has an unsecured claim based on the breach of the contract
 - lost benefit of the bargain; out of pocket costs

Defenses and Counterclaims: Post-Sale

- Fraud
- Foreclosure Rescue state statute
 - Deed that was represented to be a loan
 - Sale when homeowner is in “default” on a mortgage (what about prop taxes? Other distress?)
 - Right of rescission and/or damages
- Bankruptcy: avoid a fraudulent transfer
- Wrongful eviction

Combatting "We Buy Houses" Scams

- Limit access to foreclosure lists
 - Fair Credit Reporting Act violation?
- Reach homeowners the same way they are being reached by scams (Signs? Direct mailings?)
- Changes to state or local laws
 - Require purchaser to give seller a copy of an online valuation
 - Right of rescission of the purchase & sale contract up to the time of sale if home was not publicly listed for sale
 - Expand foreclosure rescue statutes?
 - Wholesalers, realtors, political power

QUESTIONS?

Classic Foreclosure Rescue: Sale with Repurchase Option / Disguised Credit Transaction

A Typical Story

- Heather Homeowner, desperate to save her home from foreclosure, hears about a guy who can help her from a friend of a friend.
- Rick Rescuer has her sign a bunch of paperwork, and tells her not to worry, she just needs to pay him for a few years and she will be able to buy her house back.
- A year later, after Heather misses a payment, she receives a notice that Rick is going to evict her. He says she is a tenant and she has to go.

What is Really Going On?

- Overview of the transaction
 - Sale-leaseback with option to buy back:
 - Conveyance to the rescuer with some “option” to repurchase
 - Potential arrangements by the rescuer:
 - Pay just enough to stop foreclosure
 - Pay off the mortgage (new financing?)
 - Set up a trust
 - What about the equity?

Investigating a Foreclosure Rescue Case

- Information to collect:
 - Solicitation documents
 - Social media
 - Text messages/emails
 - Public documents
 - Information related to mortgage
 - Appraisals/inspections
 - Title office records
 - Everything the homeowner was given
 - Payment records

Legal Claims and Defenses (1 of 2)

- **Equitable Mortgage:**
 - Common law doctrine where courts look beyond the legal form of the transaction to its true substance
 - Deed transferring can be become voidable and homeowner may be able to regain title
- **Consumer credit laws should apply**
 - Truth in Lending Act (TILA): disclosure of cost of credit; ability to repay
 - Home Ownership and Equity Protection Act (HOEPA): high cost loan

Legal Claims and Defense (2 of 2)

- Foreclosure rescue statute (state law)
 - Representing that a deed is really a loan
 - Purchasing a home from a borrower who is in default on mortgage, must give a right to cancel
- Unfair and deceptive acts and practices
- Fraud/fraudulent inducement
- Bankruptcy court: fraudulent transfer

Big Problem:

Bona Fide Purchaser Defense

- The rescuer will often sell or refinance the home quickly
- If a third party can assert it is a bona fide purchaser, may cut off homeowner's ability to recover ownership
- Get a *lis pendens* on file right away
 - Notice recorded in a real property's chain of title to put third parties on notice of the existence and scope of pending litigation affecting the title

Bona Fide Purchaser Defense

- Look for facts and theories that:
 - Support a finding that the transaction is *void* and so no interest could be transferred
 - That the third party had notice:
 - Actual notice
 - Constructive notice (possession?)
 - Inquiry notice

Use of “Land Trusts”

- Scammer may draw up closing docs so as to put the house into a trust
- “Tina Smith Land Trust” or “123 Sycamore Lane Land Trust”
- Scammer is Trustee; Homeowner is Beneficiary
- Homeowner is then required to transfer the beneficial interest to Scammer
- Avoid due-on-sale clauses; homestead exemption?
- Confuse the homeowner about what is happening
- Claims for breach of fiduciary duty, self-dealing?

Loan Modification Scams: Types of Abusive Practices

- “Guarantee” of a loan modification
- Taking cash up front
- Doing nothing
- Ghost-writing Bankruptcy Forms (and not disclosing as a petition preparer)

Legal Defenses and Claims for Loan Modification Scams

- State debt adjuster laws (E.g., O.C.G.A. §18-5-1)
- Petition preparer violations – if bankruptcy filing
- Unfair and Deceptive Acts and Practices (UDAP)
- FTC/ MARS Rule as a UDAP violation (16.4.4 of the Home Foreclosures Manual)
 - Applies to “mortgage assistance relief service providers.”
With some exceptions, this includes anyone who provides, offers to provide, or arranges for someone else to provide any mortgage assistance relief service.

MARS Rule

- Cannot receive payment until an offer of relief is obtained from the mortgage servicer
- May not misrepresent the cost of the servicers or the likelihood of success
- Many state UDAP statutes say that a violation of an FTC Rule is a violation of the UDAP Statute
- See NCLC, Federal Deception Law, § 2.2.4.2
- Attorney exemption, but the attorney must:
 - Be doing so as part of the practice of law;
 - Be licensed in the state where the MARS client lives or where the dwelling at issue is located; and
 - Comply with any state law regulating the services provided.

Other Considerations for Legal Strategy

- Fly-by-night companies; may be collection-proof
- Best goal may be to help put the scammers out of business.
 - Refer to FTC or other government agencies
- Rephrase: If client filed bankruptcy pro se with assistance of a scammer, you should assist client in reporting to U.S. trustee that undisclosed preparer was involved.

FINAL QUESTIONS?

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Case Consultations

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